

REMARKS

Applicants have amended claims 6 and 7.

The Examiner requested that a reference to the patent number of the parent application of this application be made in the specification. Applicants have amended the specification accordingly.

Claims 6-11 have been rejected under 35 USC 103(a) as unpatentable over U.S. Patent No. 5,397,909 (Moslehi) in view of U. S. Patent No. 5,882,994 (Araki). Applicants respectfully traverse this rejection.

In the previous amendment filed December 6, 2005, applicants amended claim 6 to state that the formation of the field oxidation film and the second gate oxide film is performed after the formation of the first silicon layer, and the formation of the second silicon layer is performed after the formation of the field oxidation film and the second gate oxide film. Applicants explained that Moslehi and Araki together do not teach or suggest the claimed order of forming the first silicon layer, the field oxidation and second gate oxide films and the second silicon layer.

In this Action, the Examiner responds:

Applicant's claims presently use the open ended language comprising which does not exclude any order of performing the steps. If Applicants' want their specific order of performing steps to be given patentable weight then the claim must recite that the steps are only performed in the order recited or similar to language to exclude other sequences.

(Emphasis original).

Applicants do not agree with the Examiner that a term of transition, such as "comprising" and "consisting of," determines the order of the claimed process steps. Even when "consisting of" is used as the transition as the Examiner seems to suggest, the order of the process steps is not fixed if the body of the claim does not specify any order of the process steps. For example, a claim for "a method consisting of performing step A and performing step B" means that step A

may be performed prior to step B or after step B. The selection of the transition "consisting of" only requires that the claimed method includes no steps other than the recited steps. On the other hand, even when "comprising" is used as the transition, the order of the process steps is fixed if the language of the claim specifies a fixed order of the process steps.

For the Examiner to understand this point, applicants have amended claim 6 to state that the formation of the field oxidation film and the second gate oxide film is always performed after the formation of the first silicon layer, and the formation of the second silicon layer is always performed after the formation of the field oxidation film and the second gate oxide film. This claim language assures that "the steps are only performed in the order recited." Moslehi and Araki do not teach or suggest the claimed order of the process steps, as explained above.

Claim 7 recites the same order of the process steps as claim 6. The rejection of claims 6-11 under 35 USC 103(a) over Moslehi and Araki should be withdrawn because they do not teach or suggest the claimed order of forming the first silicon layer, the field oxidation and second gate oxide films and the second silicon layer.

In light of the above, a Notice of Allowance is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952**, referencing Docket No. **606402001810**.

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